

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1563

**Introduced by Committee on Labor and Employment (Monning
(Chair), Eng, Furutani, Ma, and Portantino)**

March 11, 2009

An act to ~~amend Section 2810 of~~ *add Section 2811 to* the Labor Code,
relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1563, as amended, Committee on Labor and Employment.
Employment: contracts or agreements for labor or services.

Existing law prohibits a person or entity from entering into a contract or agreement for labor or services with a construction, farm labor, garment, janitorial, or security guard contractor where the person or entity knows or should know that the contract or agreement does not include funds sufficient to allow the contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided. ~~Existing law permits an aggrieved employee to bring an action to recover the greater of his or her actual damages or \$250 per employee per violation for an initial violation and \$1,000 per employee for each subsequent violation, in addition to injunctive relief.~~ *The Division of Labor Standards Enforcement, within the Department of Industrial Relations, is charged with the responsibility of enforcing minimum labor standards under state law. The division's Bureau of Field Enforcement is responsible for investigating and enforcing statutes relating to the above targeted areas. The Economic and Employment Enforcement Coalition, composed of the division and other state and federal agencies, combines and coordinates investigative*

and enforcement efforts of the various agencies targeting the underground economy.

~~This bill would require the Labor Commissioner, by July 1, 2010, to develop and implement an enforcement protocol to be used in an investigation involving a labor contractor whose contract or agreement for construction, farm labor, garment, janitorial, or security guard services does not include funds sufficient to allow the contractor to comply with applicable local, state, and federal laws or regulations governing the labor or services to be provided~~ provide that in an investigation by the Economic and Employment Enforcement Coalition or the Bureau of Field Enforcement involving a labor contractor employing 15 or more workers in any of these 5 targeted areas, if the Division of Labor Standards Enforcement has a reasonable suspicion that a violation of potential financial significance, as defined, has been committed or cited by the division, the division must obtain the relevant terms of the contract from the contractor and make a written record thereof, as well as a record of whether there is a likelihood that the applicable contract violates those provisions requiring adequate funding. The bill also would require the division to make a record of its reasons supporting its decision to either file or not file a legal action.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2811 is added to the Labor Code, to read:
2 2811. (a) In any investigation by the Economic and
3 Employment Enforcement Coalition or the Bureau of Field
4 Enforcement involving a labor contractor employing 15 or more
5 workers in in the fields of construction, farm labor, garment,
6 janitorial, or security guard service, if the Division of Labor
7 Standards Enforcement has a reasonable suspicion that violations
8 of potential financial significance have been committed or if such
9 violations have been cited by the division and have not been set
10 aside by the division within 15 days of their issuance, the division
11 shall do the following:
12 (1) Issue an administrative subpoena for the relevant portions
13 for any written contract covering the work performed by the
14 contractor.

1 (2) *If there is no written contract, obtain from the contractor*
2 *the relevant terms of any oral contract and make a written record*
3 *of the information provided by the contractor.*

4 (3) *Record whether the terms of an applicable contract appear*
5 *to violate the provisions of Section 2810 and, if so, whether the*
6 *division filed a legal action pursuant to that section. If no legal*
7 *action was filed, this record shall explain the reasons why the*
8 *division chose not to do so.*

9 (b) *For purposes of this section, a violation of “financial*
10 *significance” includes the following violations, which are within*
11 *the jurisdiction of the Division of Labor Standards Enforcement:*

12 (1) *Failure to have a worker’s compensation insurance policy*
13 *covering all employees.*

14 (2) *Multiple minimum wage violations over a period of one or*
15 *more months.*

16 (3) *Multiple serious overtime violations over a period of one*
17 *or more months.*

18 (c) *The Division of Labor Standards Enforcement shall make*
19 *a record, including a brief analysis and explanation of reasons,*
20 *in each instance that provisions of Section 2810 were likely violated*
21 *but the division determined that implementation of this section*
22 *was not feasible or practicable.*

23 ~~SECTION 1. Section 2810 of the Labor Code is amended to~~
24 ~~read:~~

25 ~~2810. (a) A person or entity shall not enter into a contract or~~
26 ~~agreement for labor or services with a construction, farm labor,~~
27 ~~garment, janitorial, or security guard contractor, where the person~~
28 ~~or entity knows or should know that the contract or agreement~~
29 ~~does not include funds sufficient to allow the contractor to comply~~
30 ~~with all applicable local, state, and federal laws or regulations~~
31 ~~governing the labor or services to be provided.~~

32 ~~(b) There is a rebuttable presumption affecting the burden of~~
33 ~~proof that there has been no violation of subdivision (a) where the~~
34 ~~contract or agreement with a construction, farm labor, garment,~~
35 ~~janitorial, or security guard contractor meets all of the requirements~~
36 ~~in subdivision (d).~~

37 ~~(c) Subdivision (a) does not apply to a person or entity who~~
38 ~~executes a collective bargaining agreement covering the workers~~
39 ~~employed under the contract or agreement, or to a person who~~
40 ~~enters into a contract or agreement for labor or services to be~~

1 performed on his or her home residence, provided that a family
2 member resides in the residence for which the labor or services
3 are to be performed for at least a portion of the year.

4 (d) ~~To meet the requirements of subdivision (b), a contract or~~
5 ~~agreement with a construction, farm labor, garment, janitorial, or~~
6 ~~security guard contractor for labor or services must be in writing,~~
7 ~~in a single document, and contain all of the following provisions;~~
8 ~~in addition to any other provisions that may be required by~~
9 ~~regulations adopted by the Labor Commissioner:~~

10 (1) ~~The name, address, and telephone number of the person or~~
11 ~~entity and the construction, farm labor, garment, janitorial, or~~
12 ~~security guard contractor through whom the labor or services are~~
13 ~~to be provided.~~

14 (2) ~~A description of the labor or services to be provided and a~~
15 ~~statement of when those services are to be commenced and~~
16 ~~completed.~~

17 (3) ~~The employer identification number for state tax purposes~~
18 ~~of the construction, farm labor, garment, janitorial, or security~~
19 ~~guard contractor.~~

20 (4) ~~The workers' compensation insurance policy number and~~
21 ~~the name, address, and telephone number of the insurance carrier~~
22 ~~of the construction, farm labor, garment, janitorial, or security~~
23 ~~guard contractor.~~

24 (5) ~~The vehicle identification number of any vehicle that is~~
25 ~~owned by the construction, farm labor, garment, janitorial, or~~
26 ~~security guard contractor and used for transportation in connection~~
27 ~~with a service provided pursuant to the contract or agreement, the~~
28 ~~number of the vehicle liability insurance policy that covers the~~
29 ~~vehicle, and the name, address, and telephone number of the~~
30 ~~insurance carrier.~~

31 (6) ~~The address of real property to be used to house workers in~~
32 ~~connection with the contract or agreement.~~

33 (7) ~~The total number of workers to be employed under the~~
34 ~~contract or agreement, the total amount of all wages to be paid,~~
35 ~~and the date or dates when those wages are to be paid.~~

36 (8) ~~The amount of the commission or other payment made to~~
37 ~~the construction, farm labor, garment, janitorial, or security guard~~
38 ~~contractor for services under the contract or agreement.~~

39 (9) ~~The total number of persons who will be utilized under the~~
40 ~~contract or agreement as independent contractors, along with a list~~

1 of the current local, state, and federal contractor license
2 identification numbers that the independent contractors are required
3 to have under local, state, or federal laws or regulations.

4 (10) The signatures of all parties, and the date the contract or
5 agreement was signed.

6 (e) (1) To qualify for the rebuttable presumption set forth in
7 subdivision (b), a material change to the terms and conditions of
8 a contract or agreement between a person or entity and a
9 construction, farm labor, garment, janitorial, or security guard
10 contractor must be in writing, in a single document, and contain
11 all of the provisions listed in subdivision (d) that are affected by
12 the change.

13 (2) If a provision required to be contained in a contract or
14 agreement pursuant to paragraph (7) or (9) of subdivision (d) is
15 unknown at the time the contract or agreement is executed, the
16 best estimate available at that time is sufficient to satisfy the
17 requirements of subdivision (d). If an estimate is used in place of
18 actual figures in accordance with this paragraph, the parties to the
19 contract or agreement have a continuing duty to ascertain the
20 information required pursuant to paragraph (7) or (9) of subdivision
21 (d) and to reduce that information to writing in accordance with
22 the requirements of paragraph (1) once that information becomes
23 known.

24 (f) A person or entity who enters into a contract or agreement
25 referred to in subdivision (d) or (e) shall keep a copy of the written
26 contract or agreement for a period of not less than four years
27 following the termination of the contract or agreement.

28 (g) (1) An employee aggrieved by a violation of subdivision
29 (a) may file an action for damages to recover the greater of his or
30 her actual damages or two hundred fifty dollars (\$250) per
31 employee per violation for an initial violation and one thousand
32 dollars (\$1,000) per employee for each subsequent violation, and,
33 upon prevailing in an action brought pursuant to this section, may
34 recover costs and reasonable attorney's fees. To maintain an action
35 under this section, an employee shall plead and prove that he or
36 she was injured as a result of a violation of a labor law or regulation
37 in connection with the performance of the contract or agreement.

38 (2) An employee aggrieved by a violation of subdivision (a)
39 may also bring an action for injunctive relief and, upon prevailing,
40 may recover costs and reasonable attorneys' fees.

1 (h) ~~The phrase “construction, farm labor, garment, janitorial,~~
2 ~~or security guard contractor” includes a person, as defined in this~~
3 ~~code, whether or not licensed, who is acting in the capacity of a~~
4 ~~construction, farm labor, garment, janitorial, or security guard~~
5 ~~contractor.~~

6 (i) ~~(1) The term “knows” includes the knowledge, arising from~~
7 ~~familiarity with the normal facts and circumstances of the business~~
8 ~~activity engaged in, that the contract or agreement does not include~~
9 ~~funds sufficient to allow the contractor to comply with applicable~~
10 ~~laws.~~

11 ~~(2) The phrase “should know” includes the knowledge of any~~
12 ~~additional facts or information that would make a reasonably~~
13 ~~prudent person undertake to inquire whether, taken together, the~~
14 ~~contract or agreement contains sufficient funds to allow the~~
15 ~~contractor to comply with applicable laws.~~

16 ~~(3) A failure by a person or entity to request or obtain~~
17 ~~information from the contractor that is required by an applicable~~
18 ~~statute or by the contract or agreement between them constitutes~~
19 ~~knowledge of that information for purposes of this section.~~

20 (j) ~~The Labor Commissioner shall, not later than July 1, 2010,~~
21 ~~develop and implement an enforcement protocol for investigations~~
22 ~~involving a construction, farm labor, garment, janitorial, or security~~
23 ~~guard contractor whose contract or agreement for labor or services~~
24 ~~does not include funds sufficient to allow the contractor to comply~~
25 ~~with applicable local, state, and federal laws or regulations~~
26 ~~governing the labor or services to be provided.~~